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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,555	07/25/2003	Nicolas Eches	CELA:104	9329

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PARKHURST & WENDEL, L.L.P.
1421 PRINCE STREET
SUITE 210
ALEXANDRIA, VA 22314-2805

EXAMINER

BEHREND, HARVEY E

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,555

Applicant(s)

ECHES ET AL. *ES*

Examiner

Harvey E. Behrend

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/16/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 9,10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/25/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3641

1. Applicants election with traverse of specie II (Figs. 4a, 4b) and specie A (Fig. 5a) in the 7/16/04 response, is acknowledged. Applicants arguments have been considered, however, the additional search and examination of all of the species would be an undue burden on the examiner.

If applicant would admit on the record that the various species within a grouping are obvious variants of one another, the election of species requirement with regard to that grouping will be withdrawn as set forth in the first full paragraph on page 3 of the 7/8/04 Office action.

Applicant is reminded of his responsibility of providing a listing of all claims readable on each of the elected species including any claims subsequently added (see the first paragraph in section 3 on page 2 of the 7/8/04 Office action).

At present, claims 1-8 appear readable on each of the elected species. Claims 9 and 10 are directed to non-elected specie B (Fig. 5b).

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 3641

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Clarke et al (cited by applicant).

The reference in Fig. 2 shows a segmented sabot (col. 4 lines 3+) having three axially spaced support seats, element 38 in the rear, the middle support seat having band 36, and the forward support seat having element 50 (note that Fig. 3 in a related manner, also shows three axially spaced support seats, see col. 6 lines 43+).

5. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Klumpp.

Note particularly Figs. 1 and 2 which show three axially spaced support seats respectively having bands 12, 9 and 11. Said Figs. 1 and 2 also show the rear and forward supports as being formed of radial arms or studs evenly spaced angularly around the sabot.

Art Unit: 3641

The English language abstract or summary states the forward support (front cage) can be made of composite plastic and fibre (applicants claim 6 reads on such).

6. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisping et al in view of either Klumpp or Clarke et al.

The claims differ over Bisping et al by reciting a third (forward) support seat.

However, it was already an old and advantageous expedient in this art to provide a third (forward) support seat as evidenced for example by the teachings thereof in either Klumpp or Clarke et al and to so modify Bisping et al would accordingly have been prima facie obvious. Note that such provides the obvious advantage of more stability for the projectile. The features of applicants claims 5 and 6 are no more than conventionally known advantageous features in this art and are accordingly prima facie obvious (such are even shown for example in the secondary reference of Klumpp).

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is so poorly phrased and contains misspellings as to be vague and indefinite. The claim should be rewritten to conform to idomatic English and to correct the misspellings.

9. The other references cited further illustrate pertinent art.

Art Unit: 3641

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harvey Behrend whose telephone number is 703-305-1931. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-306-4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1113.

Behrend/vs
September 15, 2004



HARVEY E. BEHREND
PRIMARY EXAMINER